

IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.39827 of 2005
PARSURAM SINGH
Versus
STATE OF BIHAR & ANR

For the petitioner : M/s Mukesh Kumar No. 2 &
Bijay Kumar Pandey, Advocates

For the State : Mr Jharkhandi Upadhaya, A.P.P.

ORDER

The petitioner has prayed for the quashing of order dated 14.9.1998 passed by the learned Additional Chief Judicial Magistrate, Lakhisarai in Lakhisarai P.S. Case No. 196 of 1994, G.R. No. 567 of 1994, whereby he has taken cognizance against the petitioner under sections 307, 302, 324, 120B and other allied sections of the Penal Code as also under section 27 of the Arms Act. A further prayer has been made for quashing order dated 15.9.2005 passed by the same court in Misc. case No. 37 of 2005, whereby the petition filed by the petitioner under section 410 Cr.P.C. for recall of the order dated 14.9.1998 by which cognizance was taken has been rejected.

It has been submitted on behalf of the petitioner that he was made an accused in the aforesaid case on the basis of the charge sheet submitted by the police wherein cognizance was taken and later on the said case was investigated by the C.I.D. who submitted a final report with a not "want of evidence against the petitioner" on 12.1.1997 which was received in the court below on 3.4.2003 and the same having been accepted on 11.9.2003, the learned Magistrate proceeded with the prosecution case on the basis of the cognizance taken earlier on 14.9.1998 and summons and warrants of arrest has

been issued against the petitioner. On this premise it has been submitted by the learned counsel for the petitioner that the learned Magistrate had erred in issuing summons and warrants of arrest against the petitioner on the basis of an order taking cognizance on 14.9.1998 without recalling its own order dated 11.9.2003 accepting the final report submitted by the C.I.D for want of evidence and that too when the name of the petitioner did not find place in the final report submitted by the C.I.D.

I have perused the records of the case and it appears therefrom that in the charge sheet dated 3.10.1994 it is stated that as the petitioner is going to complete 90 days in custody charge sheet was being submitted against him and one Ram Nandan Mandal who was shown as an absconder with a note "that the investigation has been kept pending as against the others" and that the supplementary charge sheet would be submitted after completion of investigation. Order dated 5.6.1996 in the court's ordersheet shows that the further investigation was handed over to the C.I.D., Govt. of Bihar, but notwithstanding the same the court below on 19.9.1998 took cognizance against the petitioner and Ram Nandan Mandal who are named accused in the F.I.R. and summons were issued. It further appears that on completion of investigation final report was submitted with an endorsement that occurrence is true under section 396 I.P.C. but the allegation against the accused was untrue and in the said report the name of the petitioner figures at serial no. 5. The learned Additional Chief Judicial Magistrate, Lakhisarai appears to

have accepted the final report whereafter the petition under section 410 Cr.P.C. was filed by the petitioner for recall of the order dated 3.10.1994 taking cognizance in view of the later submission of final form submitted by the C.I.D. and acceptance of the same by the Court and as stated above the said petition was rejected.

It goes without saying that in the present case the preliminary charge sheet was submitted just to prevent the release of the petitioner under section 167(2) Cr.P.C. which is neither fair, proper and unwarranted. This attitude of the investigating agency is not correct and the police must investigate any case properly and fairly and then submit its report.

It is well settled that the police has statutory right and duty to investigate the facts and circumstances of the case and submit a report of such investigation to the Court. The Court comes into picture after submission of the report.

Admittedly in the present case after submission of charge sheet cognizance was taken against the petitioner and another and after submission of final report by the CID the same was accepted by the court below which included the name of the petitioner.

Admittedly also the Magistrate has no power of recalling or reviewing his own order.

In view of the piquant situation of the instant case this Court has no option but to quash the order taking cognizance and allow the application.

The matter is remitted back to the learned Additional Chief

Judicial Magistrate, Lakhisarai to look into the entire case diary afresh and pass appropriate order in accordance with law, keeping in view the fact that it is the discretion of the Magistrate to pass an appropriate order on the basis of subsequent report submitted under section 173(8) Cr.P.C.

(Abhijit Sinha, J.)

Patna High Court, Patna.
Dated : The 10th of September, 2008
Sanjay Pd./A.F.R.

